

# **EXHIBIT A**

## **MHE Subscription and Product Purchase Agreement – Registration Page**

This Subscription and Product Purchase Agreement (the “**Agreement**”) by and between **McGraw-Hill Global Education, LLC (“MHE”)** and **Aztec Shops, Ltd., an Auxiliary of San Diego State University (“Subscriber”)** consists of the following: (i) this Registration Page, (ii) the Terms of Service attached hereto as Exhibit B (the “**Terms of Service**”), (iii) any purchase order(s) accepted by MHE, and (iv) any written addenda or amendments to any of the foregoing that are agreed to by both parties. In the event of a conflict between the terms of this Registration Page and the Terms of Service, the terms of this Registration Page will control. The Agreement shall be effective as of the date on which MHE has signed below (the “**Effective Date**”).

- 1. NAMES & ADDRESSES OF THE PARTIES.** MHE is a Delaware limited liability company with an address at 2 Penn Plaza, New York, NY 10121, and Subscriber is a private college with an address at 5500 Campanile Drive, San Diego, California 92182.
- 2. RELATIONSHIP OF THE PARTIES.** Subscriber’s End Users (as defined in the Terms of Service) will use certain online educational products and services (the “**Subscribed Materials**” or “**Services**”) and related content provided by MHE in connection with Courses offered by Subscriber. Subscriber and/or its End Users may provide personally identifiable information of the End Users to MHE in connection with accessing and using the Services. End Users will be required to agree to MHE’s [Terms of Use](https://www.mheducation.com/terms-use.html) (available on the MHE website at <https://www.mheducation.com/terms-use.html>) and the [Privacy Notice](https://www.mheducation.com/privacy.html) (available on the MHE website at <https://www.mheducation.com/privacy.html>) before accessing the Services. For the avoidance of doubt, if the MHE Solution (as defined in the Terms of Service) is integrated with Subscriber’s learning management system (“**LMS**”) through MH Campus, the [MH Campus Terms of Use](http://www.mheducation.com/highered/services/mhcampus/mhcampus-terms-of-use.html) (available on the MHE website at <http://www.mheducation.com/highered/services/mhcampus/mhcampus-terms-of-use.html>) shall apply and shall not be superseded by the terms of this Agreement.
- 3. DATA PRIVACY AND SECURITY.** MHE maintains reasonable procedures in accordance with its policies and practices and applicable law to protect the confidentiality, security, and integrity of personally identifiable information received by MHE in connection with provision of the Services to the End Users. The MHE Data Privacy and Security Guidelines attached hereto as Exhibit C.
- 4. SUBSCRIBER ADOPTION**
  - 4.1. During the Term of this Agreement (a) Subscriber will adopt the Subscribed Materials and/or Services set forth in Exhibit A as the required Course materials and services for certain Courses offered by Subscriber (“**Courses**”), as further described in Exhibit A, and (b) Subscriber shall purchase and MHE shall provide access for each of the Registered Students in each Course for the discounted fees set forth in Exhibit A (the “**Discounted Fees**”). “**Registered Students**” shall mean the number of students that are enrolled in a Course, as indicated in the Census Report provided by Subscriber, or that accessed the Subscribed Materials after the Add/Drop Date as determined by MHE and/or the Platform Provider, whichever is greater.
  - 4.2. With respect to each Course, Subscriber will provide to MHE the requisite information set out on Exhibit A.
  - 4.3. Subscriber will notify MHE of the Subscribed Materials and/or Services to be adopted in each Course at least eight (8) weeks prior to the Course commencement and such notice shall constitute Subscriber’s offer to purchase End User access to such Subscribed Materials and/or Services. Such notice may be in the form of one or more purchase orders to MHE, which shall be subject to acceptance by MHE and the terms of this Agreement. Terms and conditions contained on such purchase orders that are additional to or different from the terms of this Agreement (other than Bill-To, Ship-To and Product quantity information, desired delivery date(s) and other administrative information) shall not be enforceable.
- 5. INDIVIDUAL SUBSCRIPTION AND ACCESS.** Subscriber shall not permit anyone other than the End Users to use or access the Subscribed Materials and/or Services. Subscriber may not share passwords or other login credentials provided for

accessing the Subscribed Materials and/or Services with third parties or among the End Users and shall advise its End Users that such sharing is not permitted. If requested by MHE, Subscriber shall cooperate with MHE in the investigation of any unauthorized use of the Subscribed Materials and/or Services of which Subscriber is made aware and use best efforts to remedy such unauthorized use and prevent its recurrence. In the event of any unauthorized use of the Subscribed Materials and/or Services by an End User, in addition to any remedies available herein, MHE may suspend or terminate such End User's access to the Subscribed Materials and/or Services (for example, by blocking an individual user's IP address or other means).

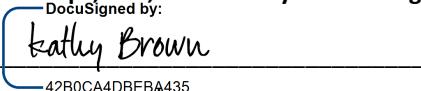
6. **CENSUS REPORTING.** Each academic term, within five (5) days after the final add/drop date for the Course (the "Census Due Date"), Subscriber will deliver to MHE at the address set out in Exhibit A a true and accurate "**Census Report**" setting forth, for each Course and the associated Subscribed Materials and/or Services, the number of Registered Students enrolled in that Course as of the Add/Drop Date, as well as any specific information set out in Exhibit A.1
7. **TERM.** The term of this Agreement is for two (2) years from the Effective Date (the "**Term**").
8. **FEES; INVOICING; CENSUS PROVISIONS.**
  - 8.1. Discounted Fees are subject to bi-annual increases.
  - 8.2. MHE will invoice Subscriber after the Census Due Date the Discounted Fees for each Registered Student in the Census Report and Subscriber shall pay such invoice within thirty (30) days of the invoice date.
  - 8.3. As an alternative to the invoice provisions in Section 8.2, at MHE's option, and notwithstanding any other provision herein, MHE may invoice Subscriber the Discounted Fees for Registered Students who have accessed the Subscribed Materials and/or Services, based upon usage data available to MHE from the Solution, Platform Provider and/or systems that provide such access. Subscriber shall pay such invoice within thirty (30) days after the invoice date.
  - 8.4. Invoiced amounts are payable by Subscriber irrespective of the fees charged to Registered Students or received by Subscriber for access to the Subscribed Materials and/or Services. Subscriber may determine, in its sole discretion, the fees it charges Registered Students for access to the Subscribed Materials. Subscriber will pay any applicable sales, use or other tax related to the Subscribed Materials and/or Services, exclusive of taxes on MHE's income.
9. **ACCESS TO SUBSCRIBED MATERIALS.**
  - 9.1. MHE or a designated third-party provider shall provide End Users with access to the Subscribed Materials and/or Services as described herein. Subscriber shall create an individualized user name for each End User. Subscriber shall be solely responsible for keeping an accurate record of the user name assigned to each End User along with additional information that identifies End User's access to the Subscribed Materials and/or Services. The Subscription Term associated with the Subscribed Materials shall be as set forth in Exhibit A. Any access to Subscribed Materials and/or Services provided to the instructor (whether on a fee or no fee basis) for use in the Course shall be in the same format as provided to the student End Users in such Course.
  - 9.2. Access to Subscribed Materials that are eBooks and/or Services will be delivered to Registered Students via an integration with Subscriber's LMS system.
  - 9.3. Access to Subscribed Materials that are eBooks will be delivered to Registered Students via a mutually agreed upon third party platform provider ("**Platform Provider**"). It is understood that Subscriber shall be responsible for entering into any necessary agreements with the designated Platform Provider in order to obtain access to the MHE eBooks through the Platform Provider's platform ("**Platform**") and Subscriber will be solely responsible for any fees payable to the Platform Provider for any such services and for arranging with the Platform Provider for integration of the Platform within the Secure Network (as described below). MHE shall have no responsibility for the obligations of the Platform Provider or for any failure by the Platform Provider to perform or to provide access to the MHE eBooks. In order to receive access to the Subscribed Materials via the Platform, End Users must agree to the Platform Provider's End User Agreement.

10. **ACCESS GRANT.** Subject to Subscriber's payment of the fees in accordance with this Agreement, MHE hereby grants to Subscriber a non-exclusive, limited, non-assignable, non-transferable right to provide each End User access to the Subscribed Materials and/or Services via the MHE Website, subject to each End User first agreeing to the Terms of Use.
11. **SECURITY MEASURES.** Subscriber shall maintain, or caused to be maintained, a secure environment capable of receiving and allowing End Users to access the Subscribed Materials and/or Services, and shall use reasonably effective technological means, consistent with best industry practices, to monitor and prevent potential abuses and unauthorized use and access by End Users and others. A secure environment shall mean a network owned or operated by Subscriber or a third-party provider under contract with Subscriber, which environment shall ensure that Subscribed Materials and /or Services are only accessible to End Users approved by Subscriber, and who have paid the requisite fee, and whose identity is authenticated at the time of login (the "**Secure Network**"). Subscriber shall promptly notify MHE of any actual or suspected unauthorized access to the Subscribed Materials and/or Services through the Secure Network.
12. **SUSPENSION OF ACCESS.** MHE may, immediately upon providing written notice to the Subscriber, suspend the use of any or all of the Subscribed Materials and/or Services provided to Subscriber if MHE reasonably believes that access to the Subscribed Materials and/or Services has been obtained through Subscriber without the payment of fees to MHE or if Subscriber is in violation of its obligations under the Agreement. Upon termination or expiration of the Agreement, Subscriber and MHE shall immediately cease providing access to the Subscribed Materials and/or Services.
13. **PUBLIC RECORDS.** This Agreement is subject to the California Public Records Act. If a request for information concerning this Agreement is received, Subscriber will notify MHE of such request and Subscriber may be obligated to disclose some or all information contained herein.
14. **TRADEMARKS.** MHE shall not obtain, by this agreement, any rights, title or interest in the trademarks of Aztec Shops, Ltd. or San Diego State University, nor shall this Agreement give MHE the right to use, refer to or incorporate in marketing or other materials the name, logos, trademarks or copyrights of Aztec Shops. Ltd or San Diego State University without prior written consent of Subscriber, which may be granted, conditioned or denied in Subscriber's sole, absolute and unfettered discretion.

By signing below, the parties agree to be bound by the terms of the Agreement.

**Aztec Shops, Ltd., an Auxiliary of San Diego State University**

DocuSigned by:

By:   
42B0CA4DBEBA435

Kathy Brown  
Print Name: \_\_\_\_\_

Title: Director-Campus Stores

Date: March 27, 2019 | 10:47 AM EDT

**McGraw-Hill Global Education, LLC**

DocuSigned by:

By:   
10A69D643DBE4B7

Irene McGuinness  
Print Name: \_\_\_\_\_

Title: V.P Sales

Date: March 27, 2019 | 1:00 PM EDT

**Exhibit A**

*to Subscription and Product Purchase Agreement between MHE and Aztec Shops, Ltd., an Auxiliary of San Diego State University*

**Platform Provider:** Red Shelf, Inc.

**Section A: Specific MHE Subscribed Materials/MHE Services Access Purchase:**

MHE will provide Subscriber supercodes for access to the MHE Services up to the number Subscriber Registered Student enrollments in the corresponding Courses listed below.

Subscriber will provide MHE a census that identifies the number of Registered Students enrolled in each Courses listed below at the end of each Course add/drop period, and MHHE will invoice Subscriber directly the Discounted Fee for each Registered Student based upon the Registered Student enrollment data in the census. The supercodes will be invalidated after the applicable add/drop period.

Course Description	MHE Subscribed Materials/MHE Service	Discounted Fees (per Registered Student)	Subscription Term
P_H 353	Connect: Yarber, Human Sexuality: Diversity Contemporary America, 9 <sup>th</sup> Ed.	\$63.00	1 year
Chemistry 100	Connect: Denniston, General Organic & Biochemistry, 8 <sup>th</sup> Ed.	\$40.00	1 year
Comm 103	Connect: Floyd, Communications Matters, 3 <sup>rd</sup> Ed.	\$54.75	1 year

The following Discounted Fees apply for the MHE Subscribed Materials and MHE Services listed that MHE may make available and Subscriber may order other than those in Section A specified above:

**Section B: MHE Connect Access Purchase:**

Course Description	MHE Subscribed Materials/MHE Service	Discounted Fees (per Registered Student)	Subscription Term
Courses for which Connect is available from MHE	Connect	36% off the then current MHE National Connect List Price	MHE national subscription term for the specific Connect service

**Section C: MHE eBook Access Purchase:**

Course Description	MHE Subscribed Materials/MHE Service	Discounted Fees (per Registered Student)	Subscription Term
Courses for which an eBook Title is available from MHE	eBook versions of the following: <ul style="list-style-type: none"> <li>• McGraw-Hill Technology Education (Discount Code CI, and CG),</li> <li>• McGraw-Hill Higher Education College special products (Discount Code CI), and</li> <li>• McGraw-Hill Higher Education Study Guides (Discount Code SG)</li> </ul> MH Professional eBooks are not included	\$35.00	1 year

**Section D: Loose Leaf Upgrade:**

For each Registered Student for whom access to Connect or an eBook has been purchased from MHE by the Subscriber at the Fees set forth above, a loose-leaf version of the text in Connect or the eBook may be ordered by the Subscriber from MHE for availability to the Registered Student at the Subscriber bookstore, for the additional payment of \$20.00 for one semester Courses, or \$30.00 for 2 semester Courses, such order to be paid by the Subscriber to MHE. Loose Leaf is not available as a standalone purchase product.

**MHE Titles requested for specific Courses must be submitted in writing by Subscriber not less than eight (8) weeks prior to Course commencement.**

**List the Add/Drop Dates for the next two (2) Academic Terms:**

June 5, 2019

September 15, 2019

Subscriber shall deliver the Census Report to MHE to the attention of: [auditbilling@mheducation.com](mailto:auditbilling@mheducation.com)

Subscriber's point of contact for delivery of Census to MHE: **Ben Compton**; [ben.compton@darth.sdsu.edu](mailto:ben.compton@darth.sdsu.edu)

## Exhibit B

### McGraw-Hill Education Terms of Service

THESE TERMS OF SERVICE, together with the [Terms of Use](#) and the [Privacy Notice](#), form a legal agreement (the "Agreement") between McGraw-Hill Global Education Holdings, LLC or its applicable subsidiaries or affiliates ("MHE", "we" or "us") for the Services defined below and the educational institution, company, or organization ("You" or the "Subscriber") entering into this Agreement and identified on the registration page of Your subscription contract for the Services (the "Registration Page"), where applicable. This Agreement also governs Your use of the Solution (as defined below).

**These Terms of Service apply after clicking "I accept" in any available checkbox, by placing an order and paying for the Solution, by registering to use and then using the Solution, and/or by executing the Registration Page, where applicable. By accepting these Terms of Service, You affirm that You are at least 18 years of age, that You agree to these Terms of Service, the Terms of Use, and Privacy Notice and You will comply with such terms in connection with Your use of the Solution. You agree that (i) You are an employee, director, or agent of Subscriber; (ii) You have confirmed that Subscriber has agreed to be bound to these Terms of Service, the Terms of Use, and Privacy Notice; and (iii) Subscriber has authorized You to use the Solution on its behalf.**

#### 1. THE SOLUTION.

MHE has developed a web-based solution (the "Solution") that enables users to access certain online products and services ("Services") and related courses, content and information (together with the Services, the "MHE Content") offered by MHE through our website (the "Website") by purchasing a subscription. MHE hereby grants Subscriber a non-exclusive, non-transferable license to access and use the Solution, and allow each administrator, faculty member, and student enrolled by Subscriber (each a designated "End User") to access and use the Solution, through the Website, solely for educational purposes. End Users may access the Solution and the MHE Content in accordance with an access method offered by MHE and selected by Subscriber. All End Users other than K-12 students will be required to agree to the [Terms of Use](#) in order to access the Solution and the MHE Content. Payments of applicable fees to MHE are due within thirty (30) days of the date of invoice unless otherwise agreed to in writing.

#### 2. ADDITIONAL TERMS.

All use of the Solution and MHE Content is subject to this Agreement and any additional terms agreed to by the parties in connection with the Solution and MHE Content, including, without limitation, any prohibitions on distribution of the MHE Content to students or third parties. Subscriber is responsible for its End Users' use of the Solution and the MHE Content.

#### 3. ADDITIONAL SERVICES.

MHE may enhance and/or expand the features of the Solution from time to time at no additional cost to Subscriber, or may provide additional content, performance or features that may, but are not required to, be added by Subscriber at additional cost to Subscriber. Any professional services to be provided by MHE to Subscriber in connection with the Solution shall be set forth in a separate Professional Services Agreement between MHE and Subscriber.

#### 4. APPLICABLE PRIVACY LAW.

Subscriber is familiar with and agrees to be responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA"), the Family Educational Rights and Privacy Act and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, "FERPA"); and all other applicable country and state laws, rules or regulations concerning the collection, use, and disclosure of Personally Identifiable Information about End Users accessing the Services that are the subject of this Agreement (collectively, "Applicable Privacy Law"). "Personally Identifiable Information", or "PII", shall mean any information relating to an identified or identifiable natural person (a "data subject") including personal data as defined under applicable local law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. MHE acknowledges that in the course of Subscriber's use of the Services, End Users' Personally Identifiable Information may be disclosed to MHE. MHE agrees that it will comply with the requirements of Applicable Privacy Law concerning the confidentiality

and release of Personally Identifiable Information. MHE acknowledges that it will be considered a "School Official" (as that term is used in FERPA) and agrees that it will comply with the requirements in FERPA concerning the confidentiality and release of Personally Identifiable Information. Per such requirements, MHE agrees that under Applicable Privacy Law, officers, employees, and agents of MHE who access Personally Identifiable Information may use such data only for the purposes for which such data has been made available to MHE. MHE and its contractors, suppliers and licensors shall only use Personally Identifiable Information for the purpose of facilitating the performance, delivery or use of the Services. MHE shall enable Subscriber to maintain compliance with Applicable Privacy Law in connection with Subscriber's use of the Solution. For further information about MHE's data privacy and security practices, please read our Privacy Notice.

## **5. SUBSCRIBER DATA.**

All information concerning Subscriber ("Subscriber Data") and Personally Identifiable Information concerning End Users shall belong to Subscriber and shall be considered Confidential Information of Subscriber subject to the terms and conditions of this Agreement. Subscriber assumes sole responsibility for: (a) providing any notices and obtaining any consent needed to the extent required under COPPA or other Applicable Privacy Law in connection with the collection, use and/or disclosure of Personally Identifiable Information from End Users; (b) providing a reasonable means for End Users or End Users' parents, as applicable, to review Personally Identifiable Information provided by End Users to the extent required by COPPA or other Applicable Privacy Law; and (c) establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of the Personally Identifiable Information.

## **6. MHE USE OF SUBSCRIBER DATA.**

As a service provider to Subscriber, MHE will establish and maintain reasonable procedures in accordance with its policies and practices and Applicable Privacy Law to protect the confidentiality, security, and integrity of Personally Identifiable Information and Subscriber Data received by MHE in connection with provision of the Solution to Subscriber. Subscriber acknowledges and agrees that MHE has the right to use the Personally Identifiable Information and Subscriber Data collected in connection with provision of the Solution for (a) purposes of performing its obligations under this Agreement, and (b) for research purposes in connection with quality control and the development of revised or new products or services ("Research Purposes"), provided that such Personally Identifiable Information and Subscriber Data will be used by MHE for Research Purposes only in the aggregate and so that the privacy of the individual's Personally Identifiable Information will be maintained.

## **7. LOCATION OF SERVICES.**

We own, control and operate the Solution from our offices in the United States. We do not represent that materials on the Solution or the Website are appropriate or available for use in other locations. Subscribers who access the Solution from outside the U.S. are responsible for compliance with local laws, if and to the extent local laws are applicable.

## **8. OWNERSHIP.**

No intellectual property rights of any kind are assigned or transferred to Subscriber under this Agreement. Subscriber is permitted to access and use the Solution, MHE Content and any other materials provided hereunder only as expressly set forth in these Terms of Service. Subscriber is not permitted and shall have no right to use the Solution or MHE Content for any purpose other than as set forth herein. Subscriber shall not challenge, or assist any person or entity in challenging, MHE's right, title, and interest in the Solution and MHE Content.

- A. Before using any content or materials in the Solution or MHE Content designated as "open", OER, or available for public use, you should review the governing licensing restrictions associated with such content or materials. No rights of any kind are granted by MHE to use such content or materials outside of the Solution.
- B. If the Solution permits you to upload third-party content for use with your use of the Services granted herein, you represent and warrant that prior to performing any such upload you will secure all necessary rights to grant and will grant MHE the right to make such third-party content available to End Users in the same manner and to the same extent as the MHE Content provided in the Solution, and that such third-party content will not infringe any intellectual, proprietary or other rights of third parties. Additional terms

and options may be presented through the user upload interface available on the Solution which shall be in addition to, and not in lieu of, these Terms of Service.

**9. RESTRICTIONS ON USE.**

Subscriber shall not, and shall cause its employees, officers, directors, members, managers, partners, agents, third party service providers, or other designated persons (its "Representatives") not to, take any of the following actions: (a) creating or enabling the creation of derivative works, modifications, or adaptations of the Solution or MHE Content; (b) decompiling, reverse engineering or disassembling the Solution or MHE Content, (c) distributing or disclosing the Solution or MHE Content to third parties; (d) removing or modifying any proprietary marking or restrictive legends placed on the Solution or MHE Content; or (e) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Solution or MHE Content.

**10. TERM AND TERMINATION.**

This Agreement shall remain in full force and effect unless and until terminated earlier as provided in these Terms of Service. In the event that Subscriber commits a material breach of this Agreement (other than breach of its payment obligations, for which MHE may terminate this Agreement immediately), MHE may terminate this Agreement on five (5) business days' prior written notice to Subscriber; provided that Subscriber fails to cure such breach within such five (5) business day period. Subscriber may terminate this Agreement by (a) providing MHE with no less than thirty (30) days' prior written notice or (b) ceasing all access to the Solution for six (6) months or longer. No sooner than one (1) year after Subscriber accepts these Terms of Service, MHE may terminate this Agreement on at least sixty (60) days prior written notice.

**11. EFFECT OF TERMINATION OR EXPIRATION.**

Subscriber's permission to use the Solution and MHE Content shall end immediately upon any termination or expiration of this Agreement, and Subscriber shall immediately cease any use of the Solution or MHE Content upon such termination. The following provisions shall survive any termination or expiration of this Agreement: Section 8 ("Ownership"), Section 9 ("Restrictions on Use"), this Section 11 ("Effect of Termination or Expiration"), Section 12 ("Confidentiality"), Section 13 ("Representations and Warranties; Disclaimer"), Section 14 ("Liability"), 15 ("Indemnification") and Section 16 ("Miscellaneous").

**12. CONFIDENTIALITY.**

The parties acknowledge and agree that, as a result of negotiating, entering into and performing this Agreement, each party (the "Receiving Party") has and will have access to certain confidential information ("Confidential Information") of the other party (the "Disclosing Party"). Personally Identifiable Information of End Users is considered Confidential Information of Subscriber. At all times the Receiving Party shall: (i) use the same standard of care to protect the Confidential Information as it uses to protect its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (ii) not use the Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement, (iii) not disclose, distribute, or disseminate the Confidential Information to any third party (except to Representatives, as expressly permitted below), and (iv) only disclose the Disclosing Party's Confidential Information to its Representatives on a "need to know" basis; provided that each Representative is bound by confidentiality obligations at least as restrictive as those contained in this Agreement.

**13. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**

Each party represents and warrants that this Agreement constitutes its valid and binding obligation and is enforceable against it in accordance with its terms. MHE DOES NOT WARRANT THE COMPLETENESS, ADEQUACY, ACCURACY, OR USEFULNESS OF THE SOLUTION, THE MHE CONTENT OR ANY OTHER MATERIALS PROVIDED HEREUNDER (COLLECTIVELY, THE "MATERIALS"). THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. MHE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, MHE MAKES NO WARRANTY THAT (i) THE MATERIALS WILL MEET THE REQUIREMENTS OF SUBSCRIBER, (ii) THE MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MATERIALS WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE MATERIALS WILL

BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR COMMUNICATIONS GIVEN BY MHE, ITS EMPLOYEES, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW OR ADDITIONAL WARRANTIES. To the extent that MHE may not as a matter of applicable law disclaim an implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

**14. LIABILITY.**

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY OTHER PERSON CLAIMING RIGHTS DERIVED FROM SUCH PARTY'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE MATERIALS OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF SERVICE AND IN NO EVENT SHALL THE LIABILITY OF MHE OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE MATERIALS EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, MHE's liability in such case will be limited to the greatest extent permitted by law.

**15. INDEMNIFICATION.**

MHE shall indemnify, defend and hold harmless Subscriber (defined as the Trustees of the California State University, San Diego State University, the campus of San Diego State University, Aztec Shops, Ltd. and their respective principals, trustees, beneficiaries, members, partners, shareholders, officers, directors, managers, employees, agents, contractors, volunteers, successors and assigns (collectively "University")) from and against any and all liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of any claim by a third party that the technology platform underlying the Solution infringes or misappropriates the intellectual property rights of such third party. To the extent permitted by law, Subscriber shall indemnify, defend and hold harmless MHE and its parent, affiliates, successors and assigns and their respective officers, employees and agents from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of use of the Solution by Subscriber, except to the extent that such claim is subject to indemnification by MHE hereunder.

**16. MISCELLANEOUS.**

The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto; provided, however, that if Subscriber has entered into a separate written agreement with MHE regarding the subject matter hereof, that agreement will supersede this Agreement to the extent of any conflict. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither party has relied upon any representation, express or implied, not contained in the Agreement. The rights and remedies of the parties are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. No modification of or amendment to the Agreement will be effective unless in writing signed by authorized representatives of both parties. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the parties' intent. Subscriber may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of MHE, which consent MHE may grant or withhold in its sole and absolute discretion. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.

## Exhibit C

This Data Privacy and Security Guidelines (“**DPSG**” or “**Security Guidelines**”) document sets forth the duties and obligations of MHE (defined below) with respect to Personally Identifiable Information (defined below). In the event of any inconsistencies between the DPSG and the Agreement (defined below), the parties agree that the DPSG will supersede and prevail. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

### **1. Definitions.**

- a. “**Agreement**” means the Agreement between the McGraw-Hill Education entity (“**MHE**”) and Subscriber to which these Security Guidelines are referenced and made a part thereof.
- b. “**Applicable Laws**” means federal, state and international privacy, data protection and information security-related laws, rules and regulations applicable to the Services and to Personally Identifiable Information.
- c. “**End User Data**” means the data provided to or collected by MHE in connection with MHE’s obligations to provide the Services under the Agreement.
- d. “**Personally Identifiable Information**” or “**PII**” means information provided to MHE in connection with MHE’s obligations to provide the Services under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions or (iii) is protected under Applicable Laws. For the avoidance of doubt, PII does not include aggregate, anonymized data derived from an identified or identifiable individual.
- e. “**Processing of PII**” means any operation or set of operations which is performed upon PII, such as collection, recording, organization, storage, use, retrieval, transmission, erasure or destruction.
- f. “**Third Party**” means any entity (including, without limitation, any affiliate, subsidiary and parent of MHE) that is acting on behalf of, and is authorized by, MHE to receive and use PII in connection with MHE’s obligations to provide the Services.
- g. “**Security Incident**” means the unlawful access to, acquisition of, disclosure of, loss, or use of PII.
- h. “**Services**” means any services and/or products provided by MHE in accordance with the Agreement.

### **2. Confidentiality and Non-Use; Consents.**

- a. MHE agrees that the PII is the Confidential Information of Subscriber and, unless authorized in writing by Subscriber or as otherwise specified in the Agreement or this DPSG, MHE shall not Process PII for any purpose other than as reasonably necessary to provide the Services, to exercise any rights granted to it under the Agreement, or as required by Applicable Laws.
- b. MHE shall maintain PII confidential, in accordance with the terms set forth in this Security Guidelines and Applicable Laws. MHE shall require all of its employees authorized by MHE to access PII and all Third Parties to comply with (i) limitations consistent with the foregoing, and (ii) all Applicable Laws.
- c. Subscriber represents and warrants that in connection with any PII provided directly by Subscriber to MHE, Subscriber shall be solely responsible for (i) notifying End Users that MHE will Process their PII in order to provide the Services and (ii) obtaining all consents and/or approvals required by Applicable Laws.

### **3. Data Security.**

MHE shall use commercially reasonable administrative, technical and physical safeguards designed to protect the security, integrity, and confidentiality of PII. MHE’s security measures include the following:

- a. Access to PII is restricted solely to MHE’s staff who need such access to carry out the responsibilities of MHE under the Agreement.

- b. Access to computer applications and PII are managed through appropriate user ID/password procedures.
- c. Access to PII is restricted solely to Subscriber personnel based on the user role they are assigned in the system (provided, however, that it is the Subscriber's responsibility to ensure that user roles match the level of access allowed for personnel and that their personnel comply with Applicable Law in connection with use of such PII).
- d. Data is encrypted in transmission (including via web interface) at no less than 128-bit level encryption.
- e. MHE or an MHE authorized party performs a security scan of the application, computer systems and network housing PII using a commercially available security scanning system on a periodic basis.

4. Data Security Breach.

- a. In the event of a Security Incident, MHE shall (i) investigate the Security Incident, identify the impact of the Security Incident and take commercially reasonable actions to mitigate the effects of any such Security Incident, (ii) timely provide any notifications to Subscriber or individuals affected by the Security Incident that MHE is required by law, subject to applicable confidentiality obligations and to the extent allowed and/or required by and not prohibited by Applicable Laws or law enforcement. Subscriber shall not be held liable for any security incident caused by MHE
- b. Except to the extent prohibited by Applicable Laws or law enforcement, MHE shall, upon Subscriber's written request, provide Subscriber with a description of the Security Incident and the type of data that was the subject of the Security Incident.

5. Security Questionnaire.

Upon written request by Subscriber, which request shall be no more frequently than once per twelve (12) month period, MHE shall respond to security questionnaires provided by Subscriber, with regard to MHE's information security program applicable to the Services, provided that such information is available in the ordinary course of business for MHE and it is not subject to any restrictions pursuant to MHE's privacy or data protection or information security-related policies or standards. Disclosure of any such information shall not compromise MHE's confidentiality obligations and/or legal obligations or privileges. Additionally, in no event shall MHE be required to make any disclosures prohibited by Applicable Laws. All the information provided to Subscriber under this section shall be Confidential Information of MHE and shall be treated as such by the Subscriber.

6. Security Audit.

Upon written request by Subscriber, which request shall be no more frequently than once per twelve (12) month period, MHE's data security measures may be reviewed by Subscriber through an informal audit of policies and procedures or through an independent auditor's inspection of security methods used within MHE's infrastructure, storage, and other physical security, any such audit to be at Subscriber's sole expense and subject to a mutually agreeable confidentiality agreement and at mutually agreeable timing, or, alternatively, MHE may provide Subscriber with a copy of any third party audit that MHE may have commissioned.

7. Records Retention and Disposal.

- a. MHE will use commercially reasonable efforts to retain End User Data in accordance with MHE's End User Data retention policies.
- b. MHE will use commercially reasonable efforts to regularly back up the Subscriber and End User Data and retain any such backup copies for a minimum of 12 months.